

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

PAWESOME PET PRODUCTS LLC, et al.,

Plaintiff,

v.

CUTEBEAR STORES, et al.,

Defendants

Civil Action No. 22-cv-1063

(Chief Judge Hornak)

**RESPONSE TO NOTICE AT [ECF 85]**

Plaintiffs' response to each of the Court's items, in sequence, to the Court's Notice at [ECF 85] follows:

- (1) Plaintiffs have filed a supplement that provides a complete unredacted copy of all the Requests for Admissions served upon the Defendants when the Complaint was served and before any default was entered [ECF 86]. As noted in the Certificate of Service filed with the Court [ECF 49], these Requests for Admission were served with the Complaint and before any default was entered. A discussion of the relevant requests for admissions appears in the *Plaintiffs' Memorandum in Support* [ECF 77], p. 8.
- (2) Plaintiffs have reviewed the case of *Electrical Workers Local 369 Benefit Fund v. Churchman Electric & Technologies, LLC*, No. 3:19-cv-652-DJH-CHL, 2022 WL 989732, \*4 (W.D. Ky. Jan. 19, 2022), adopted by 2022 WL 2405366 (W.D. Ky. Mar. 4, 2022), as to the consideration of Requests for Admissions not responded to in the context of claims for money damages in a default judgment situation. Plaintiffs submit that the case should be distinguished because -- unlike in the present case -- the plaintiff in the

*Benefit Fund* case served its Requests for Admission after the defendant had defaulted. *Id.* at \*2 (Requests for Admissions served upon leave of court after court raised the issue of proof of damages at a conference on the default judgment). In the case now before the Court, the Requests for Admissions and the Complaint were served at the same time, prior to any defendant defaulting. [ECF 49] Each defendant had the opportunity to answer the Complaint, along with the Requests for Admissions, but chose not to, and chose not to participate in discovery, thus depriving the Plaintiffs of the knowledge of the Defendants' actual sales and expenses.

- (3) As for the Court's inquiry about the damages calculations, Plaintiff relies upon the calculations set forth in Plaintiffs' Memorandum in Support [ECF 77] at p. 9-10. In particular, the evidence shows that the Defendants infringed on the Plaintiffs' patent for at least one month before the case was filed and for one month after the case was filed. *Id.* at 10. Based upon the admitted lost profits (\$20.00 per unit) and sales made by each Defendant (30,000 units), including the convoyed toothpaste lost profits (\$7.50 per unit), with sales of (14,600 units), the total damages are calculated at \$709,500.00 which is \$2,2185.000 when trebled. The Court has previously utilized this method of calculating default damages, including unanswered requests for admissions served at the same time the Complaint was served, in multiple prior related cases, most recently in *Doggie Dental, Inc. v. CDOFFICE*, No. 22-629 (W.D. Pa., Feb. 22, 2022) (Hornak, CJ), *Doggie Dental, Inc. v. Avantdigital*, No. 22-1063 (W.D. Pa., Feb. 22, 2022) (Hornak CJ), and *Doggie Dental v. Ahui*, No. 19-cv-1627 (W.D. Pa., Sept. 27, 2021) (Hornak, CJ). Others judges in this district have also used the method of calculating the default judgment, including unanswered requests for admissions served at the same time the Complaint was

served. *See, e.g., Aquapaw Brands LLC v. Yan-Peng, et al.*, No. 21-1784 (W.D. Pa., July 29, 2022)(Wiegand, J)[ECF 63], *Aquapaw Brands LLC v. Joyi Yan, et al.*, No. 22-1607 (W.D. Pa., May 18, 2023)(Wiegand, J)[ECF 81], *Broadway Pine Brands LLC v. Bonjin-US, et al.*, No. 22-1609 (W.D. Pa., May 3, 2023)(Ranjan, J.)(ECF 61], *Broadway Pine Brands LLC v. Cococity, et al.*, No. 22-510 (W.D. Pa., November 30, 2022)(Ranjan, J)[ECF 68].

Respectfully submitted,

Dated: July 25, 2023

/s/ Brian Samuel Malkin

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